

E-132, 299/C-90-36 E-132, 299/SA-88-996 ORDER REQUESTING THE ADMINISTRATIVE LAW JUDGE TO MAKE SPECIFIC FINDINGS OF FACT AND DEFERRING ACTION PENDING RECEIPT OF THOSE FINDINGS OF FACT AND GIVING NOTICE OF COMMISSION INTENT TO CONSIDER THESE FINDINGS IN RELATED DOCKET

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson  
Cynthia A. Kitlinski  
Norma McKanna  
Robert J. O'Keefe  
Patrice Vick

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of a Complaint of People's Cooperative Power Association, Inc. Against the City of Rochester Regarding Extensions of Service to Intersections of 37th Street Northeast and East River Road and 37th Street Northeast and North Broadway

ISSUE DATE: June 4, 1990

DOCKET NO. E-132, 299/C-90-36

In the Matter of the Application of the City of Rochester, Minnesota to Adjust its Service Area Boundary With People's Cooperative Power Association, Inc.

DOCKET NO. E-132, 299/SA-88-996

ORDER REQUESTING THE ADMINISTRATIVE LAW JUDGE TO MAKE SPECIFIC FINDINGS OF FACT AND DEFERRING ACTION PENDING RECEIPT OF THOSE FINDINGS OF FACT AND GIVING NOTICE OF COMMISSION INTENT TO CONSIDER THESE FINDINGS IN RELATED DOCKET

**PROCEDURAL HISTORY**

On April 16, 1990, the Commission issued its ORDER GRANTING RECONSIDERATION AND ESTABLISHING COMMENT PERIOD in the above-referenced complaint docket E-132, 299/C-90-36, hereafter referred to as the 37th Street Complaint Docket.

On April 26, 1990, the City of Rochester (City) filed information regarding the City's 1982 purchase of certain customers and facilities of People's Cooperative Power Association, Inc. (People's). The City argued that the 1982 purchase agreement constituted written permission from People's for the City to serve within People's assigned service area and specifically at the 37th Street intersections that are the subject of the above referenced 37th Street Complaint Docket.



On May 7, 1990, People's and the Minnesota Department of Public Service (Department) filed comments on the effect of that purchase agreement on the 37th Street service area.

On May 24, 1990, the parties agreed that a contested case hearing would probably be required to resolve disputed factual matters material to whether the 1982 purchase agreement constituted written permission from People's for the City to serve within People's assigned service area and specifically at the 37th Street intersections at issue in this complaint. The parties further agreed that many of the facts in dispute were being litigated in the Service Area Boundary Adjustment case (Docket No. E-132, 299/SA-88-996, hereafter referred to as the 996 Contested Case Docket) which was set for contested case hearing beginning on June 4, 1990 in Rochester.

On May 31, 1990, the Commission met to consider this matter.

### **FINDINGS AND CONCLUSIONS**

Whether the 1982 agreement between People's and the City constitutes written permission from People's for the City to serve within People's assigned service area is material to the Commission's determinations of at least the two matters before the Commission in this order: the 37th Street Complaint Docket and the 966 Contested Case Docket.

It appears that there are issues of material fact in dispute between the parties regarding the 1982 agreement that require a contested case hearing to resolve. It would be inefficient to refer this factual dispute in the 37th Street Complaint Docket for separate contested case hearing when the same facts are being litigated in the contested case currently scheduled in the 996 Docket to begin June 4, 1990.

Accordingly, the Commission will temporarily defer proceeding in the 37th Street Complaint Docket, request the Administrative Law Judge in the 996 Contested Case Docket to make specific findings on this matter as part of her recommendation to the Commission, and give notice to the parties of Commission's intention to consider these findings when it again proceeds with the 37th Street Complaint Docket. When the Commission receives the Administrative Law Judge's findings, it will entertain Exceptions and Replies from the parties.

## **ORDER**

1. The Commission hereby requests that the Administrative Law Judge hearing the contested case in Docket No. E-132, 299/SA-88-996 make specific findings of fact regarding the effect of the 1982 purchase agreement between People's and the City.
2. The Commission hereby defers further proceedings in People's 37th Street Complaint, Docket E-132, 299/C-90-36, pending receipt of the findings and recommendations from the Administrative Law Judge regarding the effect of the 1982 purchase agreement between People's and the City.
3. The Commission hereby gives notice of its intention to consider certain findings of fact regarding the effect of the 1982 purchase agreement between People's and the City made by the Administrative Law Judge from the contested case Docket E-132, 299/SA-88-996 when it proceeds with People's 37th Street Complaint, Docket E-132, 299/C-90-36.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

(S E A L)